

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

.....
In the Matter of:)
)
Biospherical Instruments, Inc.)
5340 Riley Street)
San Diego, CA 92110)
)
Respondent)
.....

ORDER RELATING TO BIOSPHERICAL INSTRUMENTS, INC.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") has notified Biospherical Instruments, Inc. ("BII"), of its intention to initiate an administrative proceeding against BII pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) (the "Regulations"),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act"),² through issuance of a proposed charging letter to BII that alleged that BII committed three violations of the Regulations. Specifically, the charges are:

.....
¹ The charged violations occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004)). The 2006 Regulations establish the procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2006 (71 Fed. Reg. 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA").

Charge 1 15 C.F.R. §764.2(a) - Export to a listed entity without the required license

On or about September 4, 2004, BII engaged in conduct prohibited by the Regulations by exporting a profiling radiometer system ("system"), an item subject to the Regulations, (ECCN³ 3A999), to the Space Application Center, ("SAC") in Ahmedabad, India, an organization on the Department of Commerce's Entity List, (Supplement No. 4 to Part 744 of the Regulations), without obtaining a license from the Department of Commerce as required by Section 744.1 of the Regulations. In so doing, BII committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. §764.2(e) - Transferring an item with knowledge that a violation of the Regulations would occur

On or about September 4, 2004, in connection with the export referenced in Charge 1 above, BII transferred a profiling radiometer system ("system"), an item subject to the Regulations, from the United States to India with knowledge that a violation of the Regulations would occur. At all times relevant thereto, BII knew that the system was destined for SAC, an Entity List organization, that a license was required from the Department of Commerce, and that no license would be obtained. Specifically, in March 2000, BII's sales and technical support manager contacted the Bureau of Export Administration ("BXA")⁴, Office of Export Enforcement and was advised not to export anything to SAC without first contacting BXA. In addition, the freight forwarder involved in shipping the system to SAC informed BII that SAC was on the Entity List and that an export license was required. In so doing, BII committed one violation of Section 764.2(e) of the Regulations.

Charge 3 15 C.F.R. § 764.2(g) - Misrepresentation and concealment of facts - false statement on export control document

On or about August 24, 2004, in connection with the export referenced in Charge 1 above, BII made a false representation to the U.S. Government in connection with the preparation and submission of an export control document. Specifically, BII filed a Shipper's Export Declaration, an export control document as defined in Section 772.1 of the Regulations, that stated no license was required ("NLR") for the export of the profiling radiometer system ("system"), an item subject to the Regulations, to SAC. This statement was false as a Department of Commerce license was required to export the system to SAC. In so doing, BII committed one violation of Section 764.2(g) of the Regulations.

³ "ECCN" refers to "Export Control Classification Number." See Supp. 1 to 15 C.F.R. Part 774.

⁴ On April 18, 2002, the Bureau of Export Administration ("BXA") changed its name to the Bureau of Industry and Security ("BIS").

WHEREAS, BIS and BII have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

WHEREAS, I have approved of the terms of such Settlement Agreement;
IT IS THEREFORE ORDERED:


FIRST, that a civil penalty of \$13,200 is assessed against BII, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, BII will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to BII. Accordingly, if BII should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of BII's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 20th day of April, 2007.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Biospherical Instruments, Inc.)
5340 Riley Street)
San Diego, CA 92110)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Biospherical Instruments, Inc. ("BII"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2006)) (the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act"),²

¹ The charged violations occurred in 2004. The Regulations governing the violations at issue are found in the 2004 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004)). The 2006 Regulations establish the procedures that apply to this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2006 (71 Fed. Reg. 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA").

WHEREAS, BII filed a voluntary self-disclosure with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

WHEREAS, BIS has notified BII of its intention to initiate an administrative proceeding against BII, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to BII that alleged that BII committed three violations of the Regulations, specifically:

Charge 1 15 C.F.R. §764.2(a) - Export to a listed entity without the required license

On or about September 4, 2004, BII engaged in conduct prohibited by the Regulations by exporting a profiling radiometer system ("system"), an item subject to the Regulations, (ECCN³ 3A999), to the Space Application Center, ("SAC") in Ahmedabad, India, an organization on the Department of Commerce's Entity List, (Supplement No. 4 to Part 744 of the Regulations), without obtaining a license from the Department of Commerce as required by Section 744.1 of the Regulations. In so doing, BII committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. §764.2(e) - Transferring an item with knowledge that a violation of the Regulations would occur

On or about September 4, 2004, in connection with the export referenced in Charge 1 above, BII transferred a profiling radiometer system ("system"), an item subject to the Regulations, from the United States to India with knowledge that a violation of the Regulations would occur. At all times relevant thereto, BII knew that the system was destined for SAC, an Entity List organization, that a license was required from the Department of Commerce, and that no license would be obtained. Specifically, in March 2000, BII's sales and technical support manager contacted the Bureau of Export Administration ("BXA")⁴, Office of Export Enforcement and was advised not to export anything to SAC without first contacting BXA. In addition, the freight forwarder involved in shipping the system to SAC informed BII that SAC was on the Entity List and that an export license was required. In so doing, BII committed one violation of Section 764.2(e) of the Regulations.

³ "ECCN" refers to "Export Control Classification Number." See Supp. 1 to 15 C.F.R. Part 774.

⁴ On April 18, 2002, the Bureau of Export Administration ("BXA") changed its name to the Bureau of Industry and Security ("BIS").

**Charge 3 15 C.F.R. § 764.2(g) - Misrepresentation and concealment of facts -
false statement on export control document**

On or about August 24, 2004, in connection with the export referenced in Charge 1 above, BII made a false representation to the U.S. Government in connection with the preparation and submission of an export control document. Specifically, BII filed a Shipper's Export Declaration, an export control document as defined in Section 772.1 of the Regulations, that stated no license was required ("NLR") for the export of the profiling radiometer system ("system"), an item subject to the Regulations, to SAC. This statement was false as a Department of Commerce license was required to export the system to SAC. In so doing, BII committed one violation of Section 764.2(g) of the Regulations.

WHEREAS, BII has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, BII fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, BII enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, BII states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, BII neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, BII wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, BII agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over BII, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against BII in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the voluntary self-disclosure and the proposed charging letter:

a. BII shall be assessed a civil penalty in the amount of \$13,200, all of which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.

b. The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to BII. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of BII's export privileges for a period of one year from the date of imposition of the penalty.

Subject to the approval of this Agreement pursuant to paragraph 8 hereof, BII hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$13,200 civil penalty, BIS will not initiate any further administrative proceeding against BII in connection with

any violation of the Act or the Regulations arising out of the transactions identified in the voluntary self-disclosure and the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

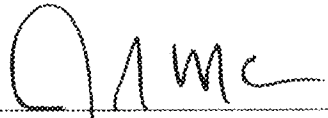
6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

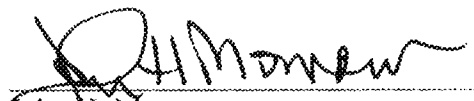
BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE



Michael D. Turner
Director
Office of Export Enforcement

Date: 4/3/07

BIOSPHERICAL INSTRUMENTS, INC.



John M. Morrow
President

Date: 19. Mar. 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Biospherical Instruments, Inc.
5340 Riley Street
San Diego, CA 92110

Attention: *Michael Holas*
Sales and Technical Support Manager

Dear Mr. Holas:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Biospherical Instruments, Inc. ("BII") of San Diego, California, has committed three violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the "Act").² Specifically, BIS charges that BII has committed the following violations:

Charge 1 15 C.F.R. §764.2(a) - Export to a listed entity without the required license

On or about September 4, 2004, BII engaged in conduct prohibited by the Regulations by exporting a profiling radiometer system ("system"), an item subject to the Regulations, (ECCN³ 3A999), to the Space Application Center, ("SAC") in Ahmedabad, India, an organization on the Department of Commerce's Entity List, (Supplement No. 4 to Part 744 of the Regulations), without obtaining a license from the Department of Commerce as required by Section 744.1 of

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2006). The charged violations occurred in 2004. The Regulations governing the violation at issue are found in the 2004 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2004)). The 2006 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 FR 44551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA").

³ "ECCN" refers to "Export Control Classification Number." See Supp. 1 to 15 C.F.R. § 774.

the Regulations. In so doing, BII committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. §764.2(e) - Transferring an item with knowledge that a violation of the Regulations would occur

On or about September 4, 2004, in connection with the export referenced in Charge 1 above, BII transferred a profiling radiometer system ("system"), an item subject to the Regulations, from the United States to India with knowledge that a violation of the Regulations would occur. At all times relevant thereto, BII knew that the system was destined for SAC, an Entity List organization, that a license was required from the Department of Commerce and that no license would be obtained. Specifically, in March 2000, BII's sales and technical support manager contacted the Bureau of Export Administration ("BXA")⁴, Office of Export Enforcement and was advised not to export anything to SAC without first contacting BXA. In addition, the freight forwarder involved in shipping the system to SAC informed BII that SAC was on the Entity List and that an export license was required. In so doing, BII committed one violation of Section 764.2(e) of the Regulations.

Charge 3 15 C.F.R. § 764.2(g) - Misrepresentation and concealment of facts - false statement on export control document

On or about August 24, 2004, in connection with the export referenced in Charge 1 above, BII made a false representation to the U.S. Government in connection with the preparation and submission of an export control document. Specifically, BII filed a Shipper's Export Declaration, an export control document as defined in Section 772.1 of the Regulations, that stated no license was required ("NLR") for the export of the profiling radiometer system ("system"), an item subject to the Regulations, to SAC. This statement was false as a Department of Commerce license was required to export the system to SAC. In so doing, BII committed one violation of Section 764.2(g) of the Regulations.

* * * * *

Accordingly, BII is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

⁴ On April 18, 2002, the Bureau of Export Administration ("BXA") changed its name to the Bureau of Industry and Security ("BIS").

Biospherical Instruments, Inc.

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The maximum civil penalty allowed by law of \$11,000 per violation;⁵

Denial of export privileges; and/or

Exclusion from practice before BIS.

If BII fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7.) If BII defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to BII. The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter.

BII is further notified that it is entitled to an agency hearing on the record if BII files a written demand for one with its answer. (Regulations, Section 766.6). BII is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4.)

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18.) Should BII have a proposal to settle this case, BII or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, BII's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of BII's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Melissa B. Mannno, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

⁵ See 15 C.F.R. § 6.4(a)(2).

Biospherical Instruments, Inc.
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Melissa B. Mannino is the attorney representing BIS in this case. Any communications that BII may wish to have concerning this matter should occur through her. She may be contacted by telephone at (202) 482-5301.

Sincerely,

Michael D. Turner
Director
Office of Export Enforcement